# Note

The decisions of the Invalidity Division of 6th February 2006 against Microsoft Corp. were eligible for appeal by Microsoft within two months, i.e. until 6th April 2006, grounded on Art. 55, 57 of Council Regulation (EC) No 6/2002 on Community designs: "An appeal shall lie from decisions of the examiners, the Administration of Trade Marks and Designs and Legal Division and Invalidity Divisions." (Art. 55). "Notice of appeal must be filed in writing at the Office within two months after the date of notification of the decision appealed from." (Art. 57).

see http://www.sanskritweb.net/forgers/segoe4.pdf, page 23 seq.

Microsoft, which did not contest at the proceedings of the Invalidity Division that the font forgery Segoe is illegal, **did not file an appeal** with the legal consequence that the distribution of the font forgery Segoe, e.g. as a component of the forthcoming Windows operating system "Windows Vista", is illegal and will remain illegal.

Ulrich Stiehl, Heidelberg, 29th July 2006

# Legal Background of the "Segoe Case"

Decisions of the Invalidity Division of 6th February 2006 File Numbers: IDC 743, 750, 768, 776, 784, 792, 800, 818 Heidelberger Druckmaschinen AG vs. Microsoft Corporation.

Note that the font names "Segoe" and "Seoge UI" are not mentioned in the decisions of the Invalidity Division, which instead speaks of the RCD (Registered Community Design).

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| DECISION OF THE INVALIDITY DIVISION OF 06/02/2006 ICD 000000784 concerning one of the Segoe Regular styles | http://www.sanskritweb.net/forgers/segoe1.pdf |
| DECISION OF THE INVALIDITY DIVISION OF 06/02/2006 ICD 000000800 concerning one of the Segoe Italic styles | http://www.sanskritweb.net/forgers/segoe3.pdf |
| COUNCIL REGULATION (EC) No 6/2002 of 12 December 2001 on Community designs | http://www.sanskritweb.net/forgers/segoe4.pdf |
| Typeset Alphabets for the Purpose of Comparing the fonts Frutiger, Frutiger Next, Segoe, and Myriad | http://www.sanskritweb.net/forgers/segoe2.pdf |
| Typeset Alphabets of the fonts Frutiger and Quebec Serial, presumably the earliest forgery of the font Frutiger | http://www.sanskritweb.net/forgers/segoe5.pdf |
| United States Design Patents for the Frutiger forgeries (e.g. Segoe Black Italic vs. Frutiger Next Black Italic) | http://www.sanskritweb.net/forgers/segoe6.pdf |

**1.**
The countries of the European Union (Spain, France, Germany etc.) have "harmonized", i.e. adapted, their national laws, so that they are very similar, but not (yet) identical.

The respective EC "harmonizing" regulation is called COUNCIL REGULATION (EC) No 6/2002 of 12 December 2001 on Community designs.

See http://www.sanskritweb.net/forgers/segoe4.pdf

Fonts are mentioned as "typographic typefaces" in Art. 3 Sect. b of the Council Regulation: ".. packaging, get-up, graphic symbols and typographic typefaces, but excluding computer programs" (see page 5 of above file segoe4.pdf). Note that "computer programs" are excluded.

**2.**
In the Segoe case, since Heidelberger Druckmaschinen AG, which owns the Linotype GmbH, is a German company, the German Design Law (Geschmacksmustergesetz) and the European COUNCIL REGULATION (EC) No 6/2002 of 12 December 2001 on Community designs must be applied.

**3.**
The new German Design Law (Geschmacksmustergesetz) was enacted as of 1st July 2004. Due to this new Design Law the old German "Schriftzeichengesetz" (Type Design Law) is no longer applicable.

See § 61 of the new German Geschmacksmustergesetz

**4.**
The new German Design Law (Geschmacksmustergesetz) now, as opposed to the old German Design Law, also protects typograpical characters (typographische Schriftzeichen).

See § 1 No. 2 of the new German Geschmacksmustergesetz.

**5.**
There are two requirements for the protection:

- Firstly, the design must have "newness" or "novelty" ("Neuheit")
- Secondly, it must have "individuality" or "individual character" ("Eigenart").

See § 2 of the new German Geschmacksmustergesetz.

The expressions used in Council Regulation No 6/2002 are "new" ("novelty") and "individual character".

See Art. 4 of Council Regulation No 6/2002.

**6.**

Newness and individuality are not examined, when a design is registered so that the registration only serves the purpose of proving the "priority" (calender date of registration) in a later design law suit.

**7.**

A registered design is protected for a maximum period of 25 years, in 5-year-chunks: 1-5, 6-10, 11-15, 16-20, 21-25 years, depending on payment of respective fees.

See § 27 of the new German Geschmacksmustergesetz

**8.**

Anyone, not only any competitor, but also any private person, can demand that a registered design is declared as invalid on the grounds that the design lacks newness and/or individuality. This was done in the Segoe case.

See § 33 of the new German Geschmacksmustergesetz

**9.**

A design may be registered for the country of the company, e.g. for Germany in case of Heidelberger Druckmaschinen AG, or it may be registered for the entire European Union. E.g. Microsoft registered Segoe for the entire European Union.

In the latter case, the invalidity decision is not made by the national court, i.e. here in Germany, but by the the "Office for Harmonization of the Internal Market" in Alicante in Spain.

Note that the decision of 06/02/2006 is eligible for appeal within the next two months.

See http://www.sanskritweb.net/forgers/segoe4.pdf, pages 40-41

**10.**

If a court has to decide whether a typeface, e.g. Segoe, is new and/or individual as opposed to another typeface, e.g. Frutiger Next, then a printout of the alphabet in uppercase and lowercase and of all Arabic figures and of 5 lines of sample text, all this typeset in exactly 16 point type size, must be compared by the court judge.

See § 6 Geschmacksmusterverordnung (additional regulation pertaining to Geschmacksmustergesetz)

**11.**

Any pair of similar typefaces is considered "identical" by the Invalidity Division of the Designs Department:

"As rightfully observed by the Applicant *[i.e. Heidelberger Druckmschinen AG]* and uncontested by the Holder *[i.e. Microsoft Corporation]*, the prior design *[i.e. Frutiger and Frutiger Next]* and the RCD *[i.e. Registered Community Design, Segoe and Segoe UI]* are to be considered identical."

See http://www.sanskritweb.net/forgers/segoe1.pdf, page 4 (i.e. section 11)

"Frutiger" and "Frutiger Next" are similar fonts, hence they are considered "identical". Therefore, Heidelberger Druckmaschinen AG could not register "Frutiger Next" as "new" and "individual" design.

See http://www.sanskritweb.net/forgers/segoe2.pdf

By the same token, "Frutiger" and "Segoe" are regarded as "identical". Therefore, Microsoft Corporation's registration of the Monotype forgery "Segoe UI" as "new" and "individual" design was invalid.

By the same token, "Frutiger" and "Myriad" are regarded as "identical". Therefore, Adobe Inc. is not allowed to register its forgery "Myriad" as "new" and "individual" design in the European Community.

For "Myriad" etc. see the other files at http://www.sanskritweb.net/forgers

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